IN THE
SUPREME COURT OF MISSOURI

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No. 83901

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JAMES L. DRURY AND MIDAMERICA HOTELS CORP.,

Respondents/Cross-Appellants,

v.

CITY OF CAPE GIRARDEAU, MISSOURI,

Appellant/Cross-Respondent.

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BRIEF OF ATTORNEY GENERAL OF MISSOURI AS AMICUS CURIAE IN SUPPORT OF APPELLANT/CROSS-RESPONDENT

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INTEREST OF AMICUS

The "clear title" rule is more often invoked to challenge state than municipal legislation. The Attorney General, who is charged with defending the constitutionality of acts of the General Assembly against such challenges, has an interest in ensuring that the relief available in a "clear title" case is appropriately tailored, so as to both fulfill the purpose of the "clear title" requirement and to preserve, to the maximum extent possible, the legislative will.

ARGUMENT

This challenge to an ordinance is based on a city-charter corollary to the requirement that the subject of every bill "shall be clearly expressed in its title." Art. III § 27, Missouri Constitution. In recent years, the concept of "clear title" has seldom been addressed by any Missouri court in the kind of splendid isolation found here. Plaintiffs typically pair "clear title" challenges with those alleging a "change in purpose" or "multiple subjects." The resulting decisions, addressing these independent but analytically related claims, have led one commentator to suggest a lack of doctrinal clarity in this court's jurisprudence. *See* Martha J. Dragitch, "State Constitutional Restrictions on Legislative Procedure: Rethinking the Analysis of Original Purpose, Single Subject, and Clear Title Challenges," 38 Harvard Journal on Legislation 103 (2001).

Among the problems alleged by Professor Dragitch is the difficulty of finding consistent rules as to the appropriate remedies in "clear title," "change of purpose," and "multiple subject" cases, respectively. The remedy in any case is a function of all the issues on which the court ruled in favor of the appellant. Because plaintiffs now seldom hang their hats solely on a "clear title" argument, the courts are seldom required to define the scope of a remedy that is required solely by a "clear title" violation. There is little need – or even opportunity – for doctrinal clarity. But when this court has been given that opportunity, it has followed a consistent course.

That course is illuminated by the particular purpose of the "clear title" requirement. That purpose, like the remedy for a violation, is seldom stated in isolation. Courts frequently lump the three Article III Section 27 requirements together, and ascribe to them a list of purposes that begins with the

prevention of "logrolling." *E.g., National Solid Waste Ass'n v. Director of Dept. of Natural Resources*, 964 S.W.2d 818, 819 (Mo. banc 1998) (*National Solid Waste*), quoting *Stroh Brewery Co. v. State*, 954 S.W. 2d 323, 325-26 (Mo. banc 1997). But the purpose of the "clear title" requirement is narrower: "to prevent fraudulent, misleading, and improper legislation." *Fust v. Attorney General*, 947 S.W. 2d 424, 429 (Mo. banc 1997). The requirement forces legislators to provide "so clear an expression of the subject of the bill [as to] at once apprise legislators and others interested of the precise subject of the proposed legislation." *City of Kansas v. Payne*, 71 Mo. 159, 1 c. 162 (Mo. 1879), quoted with approval in *State ex rel. Department of Penal Institutions v. Becker*, 47 S.W. 2d 781 (Mo. 1932) (*Becker*). *See also St. Louis Health Care Network v. State*, 968 S.W. 2d 145, 147 (Mo. banc 1998). The remedy for a violation of the requirement should fit that purpose.

Except for the decision of the court of appeals in this case, there is no confusion or lack of clarity in Missouri as to the appropriate remedy when there is an under inclusive title. In the only case to be decided recently by this court on purely "clear title" grounds, the court struck down only the portion of the statute not covered by the title.

National Solid Waste, 964 S.W.2d at 822. That approach was consistent with a long line of precedents.

Nearly 70 years ago, this court observed that it had "not hesitated to rule an act or part of an act unconstitutional when the legislation was clearly outside the title." *Becker*, 47 S.W. 2d at 782. The court cited more than a dozen precedents. In each case in which the court found the title did not

cover some provision of the statute, it did precisely what the court did in *National Solid Waste*: declare unconstitutional only that portion of the statute that extended beyond the scope of the title. *See Southard v. Short*, 8 S.W. 2d 903 (Mo. 1928); *Garment Workers of Amer.*, 6 S.W. 2d 333 (Mo. 1928); *Barrett v. Imhoff*, 238 S.W. 122 (Mo. 1922); *State ex re. Niedemeyer v. Hackman*, 237 S.W. 742 (Mo. 1922); *Vice v. Kirksville*, 217 S.W. 77 (Mo. 1920); *State v. Hurley*, 167 S.W. 965 (Mo. 1914); *State v. Sloan*, 167 S.W. 500 (Mo. 1914); *Mayes v. United St. Louis v. Wortman*, 112 S.W. 520 (Mo. 1908). There is no apparent reason to divert from that well-established course now.

By limiting relief to the portion of the law that extends beyond the title, the established rule effectively limits challengers to those who are aggrieved by a portion of a statute that falls outside the title – *i.e.*, to those who were not "apprise[d] . . . of the precise subject of the proposed legislation" that affects them. *Becker* 47 S.W. 2d at 782. The alternative rule urged here would create a vehicle for mischief, opening the door to numerous challenges brought by those who know all about the proposed legislation, but who through diligent search find after passage some clause in the statute that does not affect them, but that the title does not cover. The court should keep the door closed to such manipulation.

CONCLUSION

For the reasons stated above, should the court determine that the ordinance challenged here extends beyond the bounds of the title it was given, the court should affirm its longstanding precedents and leave in place those portions of the ordinance that it holds to be within the scope of the title.

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